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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,213	11/16/2005	David William Manley	4623-050766	2312

28289 7590 10/27/2010  
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EXAMINER
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HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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10/27/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/527,213	<b>Applicant(s)</b> MANLEY, DAVID WILLIAM	
	<b>Examiner</b> ROBIN HYLTON	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 28-52, 54 and 55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-42, 44-52, 54 and 55 is/are rejected.
- 7) ☒ Claim(s) 43 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 November 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION*****Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, “a sealing disc made of a hard material and adapted to sit across the annular surface, the disc defining a second extremely flat surface; means to urge the extremely flat surfaces into parallel abutting contact; and means to prevent lateral movement of the disc relative to the first annular surface, wherein the extremely flat surfaces are adapted to form a primary surface tension seal when they are urged into parallel abutting contact and an annular resilient membrane is positioned between the sealing disc and part of the first extremely flat surface to form a secondary seal, **and** the biasing means is one of a spring washer, a Belleville washer and a wave washer” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant

Art Unit: 3781

will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the biasing means between the cap and sealing disc when the sealing disc forms part of the cap must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "29" and "32" have both been used to designate the cap periphery in Figures 1c and 1d. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required

Art Unit: 3781

in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Sheets" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d)(1). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

#### ***Specification***

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "resilient location means".

#### ***Claim Rejections - 35 USC § 112***

6. Claims 34-36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the disclosure as originally filed for "a sealing disc

Art Unit: 3781

made of a hard material and adapted to sit across the annular surface, the disc defining a second extremely flat surface; means to urge the extremely flat surfaces into parallel abutting contact; and means to prevent lateral movement of the disc relative to the first annular surface, wherein the extremely flat surfaces are adapted to form a primary surface tension seal when they are urged into parallel abutting contact and an annular resilient membrane is positioned between the sealing disc and part of the first extremely flat surface to form a secondary seal, **and** the biasing means is one of a spring washer, a Belleville washer and a wave washer". The spring washer, Belleville washer and wave washer are disclosed to be part of other embodiments of the instant invention. This is a new matter rejection.

7. Claims 34-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

If the sealing disc of claim 29 forms part of the cap, how can the biasing means of claim 34 be between the cap and the sealing disc?

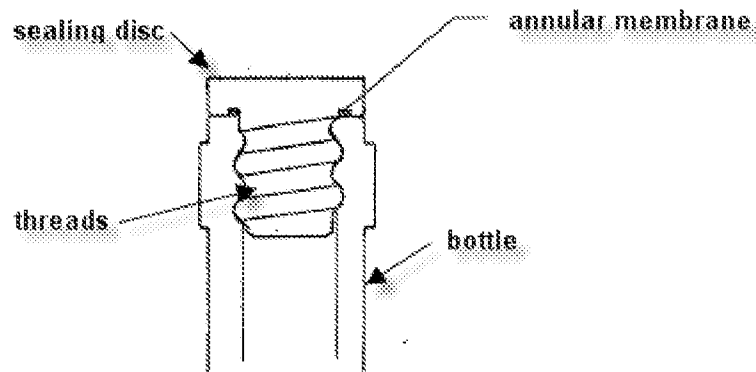
What structure represents the resilient location means engaging an undercut on the container? This structure appears to refer again to the resilient membrane.

***Claim Rejections - 35 USC § 103***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 28, 29, 31, 38, 39, 44-52, 54, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Höhr (DE 295 15 494). The claims do not invoke 35 USC 112, 6<sup>th</sup> paragraph.

Art Unit: 3781



Disclosed is a bottle having a closure with an annular membrane. The figure illustrates a groove for holding the annular membrane in place on the sealing disc and the sealing surfaces of the sealing disc and the bottle opening are "extremely flat" to the degree set forth in the instant claims.

Wherein the degree of flatness is not explicitly set forth as "in the order of a few wavelengths of visible light", it would have been obvious to one of ordinary skill in the art to form the sealing surfaces having a flatness in the order of a few wavelengths of visible light to provide smooth surfaces for a more consistent and leak-proof seal.

Höhr discloses the claimed invention except it is unclear if the material of the container is glass and the annular membrane is of a resilient material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the bottle of glass and the annular membrane is of a resilient material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

10. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Höhr in view of Spooner (US 1,351,496).

Höhr discloses the claimed invention except for internal thread on the closure.

Art Unit: 3781

Spooner teaches it is known to provide a closure with internal or external threads.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the closure of Höhr with internal threads as a known alternative for connecting a closure to a container.

11. Claims 28-30, 32, 33, 37-42, 44-52, 54, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geddes (US 2,270,729) in view of Höhr.

Geddes discloses a glass closure sealing disc and a glass container each having a flat surface and a gasket therebetween. Geddes does not disclose a primary seal and a secondary seal formed by the gasket as well as the other structure of claim 1.

Höhr teaches it is known to provide a closure sealing disc with a gasket for forming a secondary seal between to flat sealing surfaces.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of gasket forming a secondary seal between two flat surfaces of a sealing disc and a container neck opening. Doing so utilizes less gasket material to seal the container from leakage and protects the container contents from degradation.

Wherein the degree of flatness is not explicitly set forth as “in the order of a few wavelengths of visible light”, it would have been obvious to one of ordinary skill in the art to form the sealing surfaces having a flatness in the order of a few wavelengths of visible light to provide smooth surfaces for a more consistent and leak-proof seal.

Regarding the transparency of the sealing disc, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the sealing disc of a transparent material as is known in the closure art for glass closures.



Art Unit: 3781

With respect to claim 37, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make sealing disc with a domed upper surface since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 149 USPQ 47 (CCPA 1976).

#### ***Allowable Subject Matter***

12. Claims 34-36 avoid the applied prior art. However, in view of the new matter rejection, the claims cannot be deemed allowable.

13. Claim 43 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

14. In view applicant's remarks filed August 19, 2010, the election of species requirement is withdrawn.

15. Applicant's remarks regarding the disclosure and support for the closure comprising a secondary seal within the primary seal and biasing means between the cap and sealing disc have been considered, but are not persuasive. Wherein one of ordinary skill in the art would "appreciate" the various claimed biasing means could be used with a closure having a secondary seal within the primary seal, the disclosure does not include such disclosure either in the written specification or the drawings. The new matter rejection stands.

#### ***Conclusion***

16. In view of the new grounds of rejection, this Office action is made non-final.

17. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any

Art Unit: 3781

applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

19. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720/80 will be promptly forwarded to the examiner.

20. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday, **EXCEPT** Wednesday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have

Art Unit: 3781

questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
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October 25, 2010

/Robin A. Hylton/  
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GAU 3781